St. John's Law Review

Volume 13, November 1938, Number 1 Article 14

Constitutional Law--Right of Freedom from Invasion in One's House--Police Power (Oriental Merchants Association v. Valentine, 167 Misc. 373 (1938))

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

St. John's Law Review (1938) "Constitutional Law--Right of Freedom from Invasion in One's House--Police Power (Oriental Merchants Association v. Valentine, 167 Misc. 373 (1938))," *St. John's Law Review*: Vol. 13 : No. 1 , Article 14.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol13/iss1/14

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

In the case of *Carolene Products Co.* v. *Evaporated Milk Ass'n,*[17] the constitutionality of the Filled Milk Act was also involved. There, the plaintiff (defendant in the principal case) attacked the validity of the Act on the basis of the decision in *Hammer* v. *Dagenhart.*[18] In that case a statute prohibiting the transportation in interstate commerce of goods made by child labor was declared unconstitutional because it was a regulation not of commerce, but of child labor, a local matter.[19] The court pointed out, however, that, unlike the case in which lottery tickets had been banned from interstate commerce,[20] the products of child labor were of themselves harmless, and the use of interstate commerce was not necessary to effect an evil.[21] The situation in the case of filled milk resembles the one in the *Lottery* case[22] rather than the one in *Hammer* v. *Dagenhart.* The products of child labor as such have no deleterious effect on the consumer; the use of filled milk does have such an effect, and in such case the principle enunciated in *Hammer* v. *Dagenhart* has no application. It was in this view that the constitutionality of the Filled Milk Act was upheld in the Circuit Court.

A. W.

CONSTITUTIONAL LAW—RIGHT OF FREEDOM FROM INVASION IN ONE'S HOUSE—POLICE POWER.—Petitioner made a motion for an injunction to restrain the defendant from stationing police officers on his premises. The defendant justified this action because of (1) the suspicious external appliances such as peepholes, etc., used in connection with the supposed "grocery" and (2) the absence of any explanation by the petitioner as to why thirty to fifty men habitually loitered in the basement of the store. *Held,* injunction denied. The right of freedom from invasion in one's house depends on obedience to law and cannot be used to shield the commission of crime. Police officers may properly be stationed on private premises to prevent the commission of crime. *Oriental Merchants Association* v. *Valentine,* 167 Misc. 373, 3 N. Y. Supp. (2d) 229 (1938).

The fundamental principle that every person shall be protected in the enjoyment of his life, liberty and his property may be traced back to the Magna Carta and is now embodied, in some form, in every one

[17] 93 F. (2d) 202 (C. C. A. 7th, 1938).

[18] 247 U. S. 251, 38 Sup. Ct. 529 (1917).

[19] *Cf.* Bailey v. Drexel Furniture Co., 259 U. S. 20, 42 Sup. Ct. 449 (1921) (a tax on the net income of employers of child labor was held not a proper exercise of the taxing power but a regulation of child labor).

[20] See note 7, *supra.*

[21] See Hamener v. Dagenhart, 247 U. S. 251, 271, 38 Sup. Ct. 529 (1917); Brooks v. United States, 267 U. S. 432, 438, 45 Sup. Ct. 435 (1924).

[22] See note 7, *supra.*

of the state constitutions.[1] Nevertheless, in spite of the broad scope of privileges included within the fundamental right of liberty and the jealous protection by the Constitution of the rights of the individual, it has been held that personal liberty and the enjoyment of one's property are not rights which are absolute under all conditions and circumstances.[2] The state, by virtue of its police power, may always subject the rights and privileges of the individual to such reasonable restraints and regulations as are essential to the preservation of the health, safety and welfare of the community.[3]

As a general rule, police officers will not be enjoined from performing their duties in the exercise of the general police power,[4] and it has been so held even though the act may have been performed in an oppressive and unlawful manner.[5] The remedy is ordinarily an action for damages [6] or criminal prosecution.[7] However, where it is shown that the acts of the public officers will result in irreparable injury to the property of the complainant if an injunction is not issued, injunctive relief may be available,[8] as where no claim is made that a violation had ever been committed on the premises,[9] or where there is nothing more than a suggestion of a suspicion that the law had ever been violated on the premises.[10]

---

[1] Mugler v. Kansas, 123 U. S. 623, 8 Sup. Ct. 273 (1887); State v. Peel Splint Coal Co., 36 W. Va. 502, 15 S. E. 1000 (1892); Porter v. Titch, 70 Conn. 235, 39 Atl. 169 (1898); McKinster v. Sage, 163 Ind. 671, 72 N. E. 854 (1904).

[2] Crowley v. Christensen, 137 U. S. 86, 11 Sup. Ct. 13 (1890); Downs v. Swann, 111 Md. 53, 73 Atl. 643 (1909); Commonwealth v. Libbey, 216 Mass. 356, 103 N. E. 923 (1914).

[3] State v. Morse, 84 Md. 387, 80 Atl. 189 (1911). Accord: Western Theological Seminary v. City of Evanston, 325 Ill. 511, 56 N. E. 778 (1927); Matter of Hecke, 99 Cal. App. 747, 279 Pac. 470 (1929); Weisenberger v. State, 202 Ind. 424, 175 N. E. 238 (1931).

[4] Olympic Athletic Co. v. Bingham, 125 App. Div. 792, 110 N. Y. Supp. 216 (1st Dept. 1908); Shepard v. Bingham, 125 App. Div. 784, 110 N. Y. Supp. 217 (1st Dept. 1908); Schimkevitz v. Bingham, 125 App. Div. 792, 110 N. Y. Supp. 219 (1st Dept. 1908); Symphony Theatre Co. v. Ely, 187 App. Div. 757, 176 N. Y. Supp. 527 (3d Dept. 1919); Trenton Theatre Building Co. v. Frith, 93 N. J. Eq. 27, 115 Atl. 340 (1921).

[5] Campbell v. York, 30 Misc. 340, 63 N. Y. Supp. 581 (1900); Delaney v. Flood, 183 N. Y. 323, 76 N. E. 111 (1906); Suesskind v. Bingham, 125 App. Div. 787, 110 N. Y. Supp. 213 (1st Dept. 1908); Kearney v. Laird, 164 Mo. App. 406, 144 S. W. 904 (1912).

[6] Delaney v. Flood, 183 N. Y. 323, 76 N. E. 111 (1906); Suesskind v. Bingham, 125 App. Div. 787, 110 N. Y. Supp. 213 (1st Dept. 1908).

[7] *Ibid.*; Stevens v. McAdoo, 112 App. Div. 458, 98 N. Y. Supp. 553 (1st Dept. 1906).

[8] American Steel Co. v. Davis, 261 Fed. 800 (N. D. Ohio 1919); Hale v. Burns, 101 App. Div. 101, 91 N. Y. Supp. 929 (2d Dept. 1905); Rosenberg v. Shein, 77 N. J. Eq. 467, 77 Atl. 1019 (1910); Kearney v. Laird, 164 Mo. App. 406, 144 S. W. 904 (1912); Constantine v. N. Y. City, 116 Misc. 349, 190 N. Y. Supp. 372 (2d Dept. 1921).

[9] Olms v. Bingham, 118 App. Div. 894, 103 N. Y. Supp. 1196 (2d Dept. 1907).

[10] McGorie v. McAdoo, 113 App. Div. 271, 99 N. Y. Supp. 47 (1st Dept. 1906), *rev'g* 49 Misc. 601, 99 N. Y. Supp. 1107 (1906) (Where plaintiff con-

In the case under discussion, although the defendant could not claim that a violation of the law had ever been committed, the court found that he was well justified in his suspicion that gambling was being practiced on the premises.[11] However, even if such justification did not exist, the complainant's motion would have been denied on equitable grounds. One of the cardinal maxims in the law of equity is that he who comes into equity must come with clean hands.[12] The maxim is of ancient origin [13] and of broad application. It is based on the equitable principle that a right cannot arise to anyone out of his own wrong.[14] The wrongful conduct, as defined by equity, is not necessarily conduct of tortious or illegal nature but may be any unconscionable act resulting from a bad motive. This maxim excludes either party from courts of equity when such party is seeking to protect a right operating against public policy.[15] Similarly, one may be barred from relief by misconduct with reference to the suit itself. Thus, equity may refuse to protect one who fails to make a full and free disclosure of all the facts relating to the case.[16] It follows, therefore, on the basis of the above principles, that the petitioner did not apply for relief with clean hands, and so the court could not grant him equitable relief. Moreover, the petitioner, if he would have equitable relief, should have made a full disclosure of all the facts relating to the case. The facts brought out at the hearing show that the petitioner failed to explain why groups of men habitually loitered in the basement. If the court were to protect the petitioner's right of freedom from invasion in his house, it would have acted contrary to the principles of public policy,[17] and, consequently, against the principle

ducted a wallpaper business and there was no evidence of the commission of any crime, *held*, the temporary injunction should be continued).

[11] Instant case at 230: "Until a satisfactory explanation is given for the respectively constant attendance of thirty to fifty men in the basement of the supposed grocery store, standing around doing nothing, the action of the police commissioner in stationing an officer on the premises to prevent possible criminal acts will not be interfered with, for the suspicion of gambling in the premises is well justified."

[12] Koehler v. Sanders, 122 N. Y. 65, 25 N. E. 235 (1890); Rice v. Rockefeller, 134 N. Y. 194, 31 N. E. 907 (1892). Accord: Farrow v. Holland Trust Co., 74 Hun 585, 26 N. Y. Supp. 502 (1st Dept. 1893); Weiss v. Herlihy, 23 App. Div. 608, 49 N. Y. Supp. 81 (1st Dept. 1897).

[13] Bentley v. Tibbals, 223 Fed. 247 (C. C. A. 2d, 1915).

[14] Baird v. Howison, 154 Ala. 359, 45 So. 668 (1907); Harton v. Little, 188 Ala. 640, 65 So. 951 (1914).

[15] Koehler v. Sanders, 122 N. Y. 65, 25 N. E. 235 (1890); Weiss v. Herlihy, 23 App. Div. 608, 49 N. Y. Supp. 81 (1st Dept. 1897); Fay v. Larbourne, 124 App. Div. 245, 108 N. Y. Supp. 874 (1st Dept. 1908).

[16] Commonwealth v. Filiatreau, 161 Ky. 434, 170 S. W. 1182 (1914).

[17] Instant case at 229: "Whenever the actions of police are involved, sight must not be lost of the requirements and needs of good government. No matter how trivial the offense, it is infinitely better to avoid the commission of crime than to await its commission and punish. In the interests of peace and order the individual is oft compelled to suffer inconvenience, if not humiliation." At 230: "It is no new doctrine in our jurisprudence that in furtherance of order

that courts of equity will not grant relief to either party when such party is seeking to protect a right operating against public policy.[18] Therefore, it cannot be said that the petitioner conducted himself properly in reference to the suit, and so he was barred from relief.

A. E. M.

CONTRACTS — ANTICIPATORY REPUDIATION — NOT APPLICABLE TO CONTRACTS FOR PAYMENT OF MONEY ONLY.—Plaintiff corporation had given to the defendant trustees a mortgage which provided that if plaintiff was not in default, the trustees would release from the mortgage lien any lands sold by the plaintiff, on payment to them of a stipulated percentage of the purchase price. The plaintiff, having contracted to sell a certain parcel of land covered by the mortgage, requested the trustees to execute the necessary release. Previous to this contract of sale, the plaintiff had notified the trustees that it had decided not to pay an installment of interest which was due at a future date. Consequently, the trustees refused to execute the release, averring that they had treated plaintiff's threatened default as an anticipatory breach, and, therefore, they were no longer bound to perform the contract according to its original tenor. In an action to compel the defendant to execute the release, *held,* for plaintiff. The doctrine of anticipatory repudiation does not apply to contracts for the payment of money only, in installments or otherwise. *Indian River Corp.* v. *Mfg. Trust,* 253 App. Div. 549, 2 N. Y. Supp. (2d) 860 (1st Dept. 1938).

This case is in accord with previous decisions in New York [1] and in other jurisdictions.[2] The courts of this state undoubtedly recog-

---

and security the police power may be exercised in the manner against which the protagonist of this motion lodges complaint."

[18] See note 15, *supra.*

[1] McReady v. Lindenborn, 172 N. Y. 400, 65 N. E. 208 (1902); Kelly v. Security Mutual Life Ins. Co., 186 N. Y. 16, 78 N. E. 584 (1906); Werner v. Werner, 169 App. Div. 9, 154 N. Y. Supp. 570 (1st Dept. 1915); Bauchle v. Bauchle, 185 App. Div. 590, 173 N. Y. Supp. 292 (1st Dept. 1918); Curov Realty Corp. v. Powell, 246 App. Div. 832, 284 N. Y. Supp. 846 (2d Dept. 1936).

[2] Kevan v. John Hancock Mut. Life Ins. Co., 1 F. Supp. 719 (W. D. Mo. 1932); Manufacturer's Furniture Co. v. Cantrell, 172 Ark. 642, 290 S. W. 353 (1927); Fidelity & Deposit Co. v. Brown, 230 Ky. 534, 20 S. W. (2d) 284 (1929); see Alger-Fowler Co. v. Tracy, 98 Minn. 432, 437, 107 N. W. 1124, 1126 (1906).